

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
LOS ANGELES SESSION
MAY 31, JUNE 1, and JUNE 2, 2005**

(SECOND AMENDED)

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Ronald Reagan State Office Building, 300 South Spring Street, 3rd Floor, North Tower, Los Angeles, California on May 31, June 1, and June 2, 2005.

TUESDAY, MAY 31, 2005—2:00 P.M.

- (1) S123766 Scottsdale Insurance v. MV Transportation
- (2) S015008 People v. Schmeck (Mark) [*Automatic Appeal*]
- S014200 People v. Dunkle (Jon) [*Automatic Appeal*] (*rescheduled to the May 26th calendar.*)
- (3) S014664 People v. Gray (Mario) [*Automatic Appeal*]

WEDNESDAY, JUNE 1, 2005—9:00 A.M.

- (4) S117726 Cummins, Inc. v. Superior Court (Cox et al., Real Parties in Interest)
- (5) S122254 In re Marriage of Benson
- (6) S123344 Grafton Partners v. Superior Court (PricewaterhouseCoopers LLP, Real Party in Interest) (*Werdegar, J. not participating; Spencer, P. J. assigned Justice Pro Tempore.*)

1:30 P.M.

- (7) S115823 Reynolds v. Bement
- (8) S119046 State of California v. Altus Finance (*Werdegar and Chin, JJ., not participating; Yegan and Zelon, JJ., assigned Justices Pro Tempore.*)
- (9) S021054 People v. Moon (Richard) [*Automatic Appeal*]

THURSDAY, JUNE 2, 2005—9:00 A.M.

- (10) S124003 People v. Garcia (Roy)
- (11) S113295 Powerine Oil v. Superior Court (Central National Ins. Co., Real Party in Interest)
- (12) S114778 County of San Diego v. Ace Property & Casualty Ins. Co.

1:30 P.M.

- (13) S058092 People v. Harris (Maurice) [*Automatic Appeal*]
- (14) S046176 People v. Cornwell (Glen) [*Automatic Appeal*]

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
LOS ANGELES SESSION
MAY 31, JUNE 1, and JUNE 2, 2005**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, MAY 31, 2005—2:00 P.M.

(1) Scottsdale Insurance v. MV Transportation., S123766

#04-51 Scottsdale Insurance v. MV Transportation, S123766. (B150991; unpublished opinion; Superior Court of Los Angeles County; BC231352.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does an insurer have a right to reimbursement of defense fees if it reserved its right to seek such reimbursement, and fully defended and settled the action against the insured, and then sought declaratory relief and obtained a declaration that there was no duty to defend any of the claims? (See *Buss v. Superior Court* (1997) 16 Cal.4th 35.)

(2) People v. Schmeck (Mark), S015008 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

People v. Dunkle (Jon), S014200 [Automatic Appeal] (Rescheduled to the May 26th calendar.)

(3) People v. Gray (Mario), S014664 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, JUNE 1, 2005—9:00 A.M.

(4) Cummins, Inc. v. Superior Court (Cox et al., Real Parties in Interest), S117726

#03-113 Cummins, Inc. v. Superior Court (Cox et al., Real Parties in Interest),

S117726. (E032377; 109 Cal.App.4th 1385; Superior Court of Riverside County; RIC361915.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Do the “repair or replace” provisions of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1793.2) apply to a motor vehicle purchased by a California resident outside California when the efforts to repair the defect in the vehicle, as required by the statute, occur in California?

(5) In re Marriage of Benson, S122254

#04-14 In re Marriage of Benson, S122254. (B165252; 114 Cal.App.4th 835; Superior Court of Santa Barbara County; 1043139.) Petition for review after the Court of Appeal affirmed the judgment in a marital dissolution action. This case presents the following issue: Although Family Code section 852(a) requires an express declaration in writing to effect a transmutation of community property into the separate property of one spouse, may this statutory requirement be satisfied by proof of partial performance of an oral agreement to effect such a transmutation?

(6) Grafton Partners v. Superior Court (PricewaterhouseCoopers LLP, Real Party in Interest), S123344 (Werdegar, J. not participating; Spencer, P. J. assigned Justice Pro Tempore.)

#04-35 Grafton Partners v. Superior Court (Price Waterhouse Coopers, Real Party in Interest), S123344. (A102790; 115 Cal.App.4th 700; Superior Court of Alameda County; 2002056106.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Is a provision of a contract in which the parties agree in advance not to demand a jury trial in any action that may arise out of the contract enforceable or is such a contract provision unenforceable in light of the relevant California constitutional and statutory provisions relating to the waiver of trial by jury in civil cases? (See Cal. Const., art I, § 16; Code Civ. Proc., § 631.)

1:30 P.M.

(7) Reynolds v. Bement, S115823

#03-95 Reynolds v. Bement, S115823. (B158966; 107 Cal.App.4th 738; Superior Court of Los Angeles County; BC226353.) Petition for review after the Court of Appeal

affirmed the judgment in a civil action. This case includes the following issue: Can the officers and directors of a corporate employer personally be held civilly liable for causing the corporation to violate the statutory duty to pay minimum and overtime minimum wages, either on the ground such officers and directors fall within the definition of “employer” in Industrial Welfare Commission Wage Order 9 or on another basis?

(8) State of California v. Altus Finance, S119046 (Werdegard and Chin, JJ. not participating; Yegan and Zelon, JJ. assigned Justices Pro Tempore.)

#04-04 State of California v. Altus Finance, S119046. (9th Cir. No. 01-08587; 344 F.3d 920; Central District of California; CV 01-8587-AHM(CWX).) Request under California Rules of Court, rule 29.8, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: “(1) Can the Attorney General pursue civil remedies, under the California False Claims Act [(Gov. Code, § 12650 et seq.)] and the California Unfair Competition Law [(Bus. & Prof. Code, § 17200 et seq.)], concerning assets of an insolvent insurance company for which the Insurance Commissioner is acting as conservatory or liquidator, or does the California Insurance Code, particularly section 1037, give exclusive authority to the Insurance Commissioner to bring civil actions? (2) Do assets to which the California Insurance Commissioner acquires title from an insolvent insurance company under California Insurance Code section 1101 constitute ‘state funds’ within the meaning of the California False Claims Act [(Gov. Code, § 12650(b)(1))]?”

(9) People v. Moon (Richard), S021054 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

THURSDAY, JUNE 2, 2005—9:00 A.M.

(10) People v. Garcia, S124003

#04-40 People v. Garcia, S124003. (A098872; 116 Cal.App.4th 404; Superior Court of Santa Clara County; 210516.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case includes the following issue:

When the jury has visited the crime scene during the presentation of evidence at trial and then asks to revisit the crime scene during deliberations, do defendant and his or her counsel have the right, upon request, to be present at the jury's revisit to the crime scene?

(11) Powerine Oil Co. v. Superior Court (Central National Ins. Co., Real Party in Interest), S113295

#03-58 Powerine Oil Co. v. Superior Court (Central National Ins. Co., Real Party in Interest), S113295. (B156216; 104 Cal.App.4th 957; Superior Court of Los Angeles County; VC025771.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does an “excess” or “umbrella” liability insurance policy require the insurer to indemnify its insured for the costs and expenses incurred to comply with cleanup orders issued during administrative environmental proceedings, when the coverage provision of the policy states that the policy provides coverage for “damages . . . and expenses”?

(12) County of San Diego v. Ace Property & Casualty Ins. Co., S114778

#03-59 County of San Diego v. Ace Property & Casualty Ins. Co., S114778. (D038707; 106 Cal.App.4th 349; Superior Court of San Diego County; GIC732418.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issue: Does a nonstandard third party liability insurance policy providing “excess” and “umbrella” coverage for “damages” require the insurer to indemnify its insured for environmental response and cleanup costs ordered by an administrative agency outside the litigation context?

1:30 P.M.

(13) People v. Harris (Maurice), S058092 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(14) People v. Cornwell (Glen), S046176 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.